

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

In the matter of:	)	
	)	Adversary Proceeding
SCOTT A. USSERY )		
(Chapter 7 Case <u>94-20390</u> )	)	Number <u>94-2048</u>
	)	
<i>Debtor</i>	)	
	)	
	)	
	)	
BARNETT BANK OF SOUTHEAST	)	
GEORGIA, N.A.	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
v.	)	
	)	
SCOTT A. USSERY )		
	)	
<i>Defendant</i>	)	

**ORDER REINSTATING JUDGMENT**

On March 15, 1995, this Court entered an Order in the above-captioned proceeding directing the Clerk to enter Judgment in favor of Plaintiff, Barnett Bank of

Southeast Georgia, N.A, and against Defendant/Debtor, Scott A. Ussery, in the amount of \$6,203.61. The Order also declared that said debt was excepted from any discharge entered in Debtor's Chapter 7 case. The Clerk entered Judgment on the same date, March 15, 1995. The Order was entered pursuant to a Memorandum Opinion in which this Court concluded that the Debtor's failure to maintain insurance in violation of a duty imposed upon him in a retail sales contract between he and Barnett, constituted a willful and malicious injury under section 523(a)(6) to Barnett's security interest therein when the vehicle suffered damage that would have been a covered loss under the required insurance.

Fifteen days after entry of the Order and Judgment, on March 30, 1995, the Eleventh Circuit Court of Appeals rendered its decision in In re Walker, 48 F.3d 1161 (11th Cir. 1995). In Walker, the Court held that a debtor's failure to obtain workers' compensation insurance does not constitute a willful and malicious injury when an employee suffers an injury that would have been covered under such insurance. Accordingly, this Court entered an Order on May 5, 1995, vacating the March 15 Order and Judgment and directing that the matter be assigned for oral arguments on the legal effect of the Eleventh Circuit's decision in Walker on this Court's conclusion that Debtor's failure to maintain insurance on the vehicle constituted a willful and malicious injury.

Oral arguments were heard on June 8, 1995, in Brunswick, Georgia. For the reasons set forth below, the Court concludes that its previous order vacating the March

15th Judgment was improvidently granted, and as a result, the March 15, 1995, Order and Judgment will be reinstated.

There is no doubt that the Eleventh Circuit's decision in Walker effectively overrules this Court's ruling in its March 15 Opinion that the failure of a debtor to obtain required insurance constitutes a willful and malicious injury under Section 523(a)(6) of the Bankruptcy Code. There is also little doubt that, had this Court had the benefit of the Eleventh Circuit's decision in Walker prior to rendering its ruling in this adversary proceeding, I would have held, reluctantly, that Debtor's failure to insure did not constitute a willful and malicious injury under Section 523(a)(6).

The Eleventh Circuit's decision in Walker, however, was rendered on March 30, 1995, a full fifteen days after this Court entered its Memorandum and Order in this adversary proceeding. Debtor did not file a notice of appeal under Bankruptcy Rule 8002 or Motion for Rehearing under Bankruptcy Rule 8015, and as a result, the Court's March 15 Order was final and no longer subject to direct review when the Eleventh Circuit handed down its opinion in Walker.<sup>1</sup> The United States Supreme Court has held that

When th[e] Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation

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<sup>1</sup> See F.R.Ban kr.Pro. 800 2(a).

of federal law and must be given full retroactive effect in all cases *still open on direct review* and as to all events, regardless of whether such events pre-date or post-date [its] announcement of the rule.

Harper v. Virginia Dept. of Taxation, -- U.S. --, 113 S.Ct. 2510, 2517, 125 L.Ed. 2d 74 (1993) (emphasis added). Because the March 15th Order was not subject to direct review when Walker was handed down, it cannot be applied retroactively to this case. Accordingly, IT IS THE ORDER OF THIS COURT that the March 15, 1995, Order and Judgment entered in this adversary proceeding be reinstated and given full legal effect.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of June, 1995.